

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 99-02
(July 2, 1999)

**Fundamental Incompatibility of Judicial Position
and Law Enforcement Certification**

Issues

1. May a newly elected judge retain his or her law enforcement certification?

Answer: No.

2. May a newly elected judge retain reserve deputy sheriff status?

Answer: No.

3. May the judge, as a civilian, go on a police ride-a-long?

Answer: No, with qualifications.

Facts

A newly-elected justice of the peace worked as a certified police officer before taking judicial office. If possible, the judge would like to retain law enforcement certification and continue to serve as a reserve deputy.

Discussion

Issues 1 and 2

The first two inquiries are best answered by reviewing the relevant statutory and regulatory authority. The Arizona Law Enforcement Officer Advisory Council (ALEOAC) was statutorily enacted in 1968. A.R.S. § 41-1821. The composition of the council is drawn almost exclusively from the executive branch and has no member of the judiciary. Foremost among ALEOAC's duties is the prescription of reasonable minimum qualifications for peace officers and the continued responsibility to constantly review those standards. A.R.S. § 41-1822.3. It also trains constables and certifies investigators. A.R.S. §§ 22-131(B) and 41-192.03.

For the most part, only persons certified by ALEOAC [otherwise now known as the Arizona Peace Officer Standards and Training Board or "the Board" or "APOST"] may exercise the authority or perform the duties of a peace officer. A.R.S. § 41-1823. There are five categories of peace officers. R. 13-4-103 (D). *See* R.13-4-110 (C) (1) Arizona Administrative Code Title 13, Ch.4.

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The justice of the peace at hand is presently a reserve sheriff's deputy. By law, a "reserve officer" is a full authority peace officer who is not paid a salary. R. 13-4-101(14). As a reserve officer, the judge could potentially be responsible for directly supervising and controlling a limited reserve peace officer. *See* R. 13-4-104(A). Furthermore, the board requires continued training to keep ALEOAC certification.

The relevant training includes meeting the firearms qualification requirements and a yearly eight hours training encompassing: search and seizure, new procedures and technology, officer survival techniques, management and supervision, interviewing and questioning, crime prevention, state statutes, court decisions and other law enforcement related topics. R. 13-4-111(B)(2). All instructors, unless nominated by an agency head or school administrator, must have a minimum of one year police experience. R.13-4-114(B). Funding for officer training stems exclusively from the peace officers' training fund. A.R.S. § 41-1825 (A). Hence, the board's composition, the source funding and the primary benefit, in terms of continued high standards and required firearms training, all reside within the executive branch.

Central to the resolution of all the instant questions are two tenets encapsulated within the Code of Judicial Conduct. A judge is concurrently charged with the avoidance of even the slightest appearance of impropriety as well as the maintenance of the independence of the judiciary. Canons 1 and 2. Thus, a judge may neither undermine public confidence in the integrity of the judiciary nor compromise its independence. In practical terms, then, a judge may not belong to a sheriff's posse (Opinion 94-03), may not co-sponsor a professional association with law enforcement (Opinion 92-17) and may not serve as a "limited reserve" police officer (Opinion 96-15 which dealt with a *volunteer* hearing officer). These opinions are based on the belief that "there must be a separation between law enforcement and the judiciary in fact and in appearance" (Opinion 96-15). This echoes the concern that:

The linchpin of our judicial system is the principle that judges are and remain neutral and disinterested in all matters. A corollary to this principle is that judges be detached from all parties who may have any interest in matters *sub judice* [under judicial consideration] such as persons associated with law enforcement, criminal prosecution and criminal defense.

Opinion 85-1.

These are lofty, difficult and necessary challenges that any judge must meet when taking judicial office. Other jurisdictions have addressed similar concerns. Utah, for example, opined that teaching a class on the law, courtroom demeanor and testimony to law enforcement creates the impression that the judge is not impartial and may be influenced by the officers. Utah Judicial Ethics Advisory Opinion 88-5. Therefore, to continue to inject one's self into law enforcement by retaining ALEOAC certification is incongruous with Canons 1 and 2.

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Issue 3

The last inquiry is much more difficult to answer for we have formerly opined that occasional participation in a police drive-along is not barred (provided the participation is not routine and that the judge recuse from hearing any matters that were cited during the ride-along). That informal opinion must be qualified. Educational purposes, for example, would be acceptable reasons to go on a police ride-along. In this case the judge is an experienced officer, now retired. It cannot be seriously argued, therefore, that the purpose of the ride-along is educational. Absent an articulable valid purpose, a police ride-along is anathema to a judge's obligation to avoid the appearance of impropriety and to maintain the integrity of the judiciary's independence. (See Washington Ethics Advisory Committee, Opinion 85-3, for an analogy.)

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1 and 2 (1993).

Other References

Arizona Revised Statutes, §§ 22-131 (B), 41-192.03, 41-1841, 41-1822.3, 41-1823 and 41-1825 (A).

Arizona Judicial Ethics Advisory Committee, Opinions [85-01](#) (1985); [92-17](#) (Dec. 29, 1992); [94-03](#) (Feb. 18, 1994); [94-10](#) (Aug. 3, 1994); [95-02](#) (March 17, 1995); [96-12](#) (Oct. 4, 1996); [96-15](#) (Dec. 4, 1996).

Arizona Administrative Code, Title 13, Ch.4: R 13-4-103 (D), R 13-4-104 (C), D 13-4-110 (C)(1), R 13-4-111 (B)(2), R 13-4-113 and R 13-4-114(B).

Utah Ethics Advisory Committee, Opinion 88-5 (Sept. 15, 1988).

Washington Ethics Advisory Committee, Opinion 85-3 (May 3, 1985).